IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3820 of 2002

with

SPECIAL CIVIL APPLICATION No 3825 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHOJA SHAMALA RABARI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3820 of 2002
HL PATEL ADVOCATES for Petitioner No. 1
MR AY KOGJE, AGP for Respondent No. 1-3

2. Special Civil Application No. 3825 of 2002
HL PATEL ADVOCATES for Petitioner No. 1
MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/07/2002

ORAL COMMON JUDGEMENT

1. Heard ld. counsel Mr. Vijay Patel appearing for the petitioner in both these petition and ld. AGP Mr. A.Y.Kogje, appearing for Respondent Nos. 1 to 3 in Spl.C.A. No. 3820/2002 and ld. AGP Mr. H.H.Patel, appearing for Respondent Nos. 1 to 3 in Spl.C.A. No.3825/2002.

2. Both these petitions are filed by the petitioners-detenu who are real brothers invoking jurisdiction of this Court under Article 226 of the Constitution of India challenging the legality and validity of the orders of detention passed against both of them on the same day viz. on 10.12.2001 by the District Magistrate, Jamnagar, in exercise of the powers vested in him under Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). Both the petitions are simultaneously heard and as the grounds assailing the orders of detention under challenge are similar in both the petitions, with the consent of the ld. counsel appearing for the parties, and disposed of by this common oral judgment.

3. Both the petitioners are branded as "property grabbers" within the meaning of Section 2(h) read with Section 2(i) of the PASA Act. On perusal of the papers produced by the petitioners including the grounds of detention served on both the detenues, it reveals that the subjective satisfaction is recorded by the detaining authority on the facts that the petitioners have encroached upon three different parcels of lands situated in the sim of village Meghpar and Jogvad, Ta : Lalpur, District : Jamnagar and are enjoying the fruits by letting the open parcels of lands and the superstructure erected on said lands. As per the grounds of detention served on the detenues, it transpires that about 1000 sq.ft. of lands of government waste land survey No.83/1 paiki of village Meghpar was encroached upon and after erecting pakka construction thereon, the same was let out to one Shri Manubhai Jerambhai and the petitioners were recovering Rs. 2500/ per month as rent from said Shri Manubhai. Similarly, approximately 500 sq.ft. of lands of government waste land survey No.83/1 paiki of village Meghpar was encroached upon by the detenues and were given to one Ashok R. Agrawal on rent in the same manner. One Abdul Razak was also given one shop erected by the petitioners on the same land and they were recovering monthly rent of Rs.150-00 from him. Nine

other different persons named in the grounds of detention were also put into possession of different shops erected on the lands of Survey No. 221 owned by the government situated in the outskirts of village Jogvad on monthly rent. All these persons were not given receipt. Government officers were satisfied that it would be difficult for them to pull down the superstructure viz. houses/ shops constructed in an illegal manner on the government lands wherein all these persons who are either residing therein or carrying on their respective business. It is also the case that three different persons namely (1) Gulabji Premji, (2) Suresh Harji Sanchania, and (3) Hansaben Velji Naliapara were given open government land of Survey No.221 situated in the sim of village Jogvad for erecting brick kiln (Baththa) and doing business of manufacturing bricks and those persons were also giving substantial amount of monthly rent to the petitioners. The petitioners were also found providing water to all these brick kiln holders from the Bore Well constructed by them on the said land. It is alleged that the petitioners being "dangerous persons", they were able to encroach upon approximately 9 Gunthas of government lands of Survey No.99 of village Jogvad.

4. Ld. AGP Mr. Kogje by referring to Section 2(h) and 2(i) of the PASA Act, has submitted that the activities of the present petitioners in encroaching upon the government waste lands and making construction thereon illegally and parting the possession thereof to a third person for monetary gain, clearly indicate that the petitioners are "property grabbers" as defined under the PASA Act and they can very well be detained by invoking powers under Section 3 of the PASA Act. It is vehemently argued that the petitioners were appraised of all the relevant aspects and were informed about the subjective satisfaction recorded by the District Magistrate and that behaviour of the petitioners was obviously affecting the "public order".

5. Ld. counsel Mr. Vijay Patel for the petitioners has assailed the legality and validity of the orders of detention passed against both the detenues on various grounds, but has focussed his arguments only on one ground without pressing into service the other grounds, that the petitioners' right to make effective representation to the detaining authority or to the State Government has been seriously prejudiced as the petitioners are not served / supplied with all relevant material and vital documents. The constitutional safe-guard/guarantee provided by Article 22(5) of the Constitution, has not been taken care of by the

authorities and, therefore, it violates the legality and validity of the orders of detention under challenge.

6. Ld. counsel Mr. Patel has pointed out that as per the grounds of detention served to the petitioners, Deputy Collector, Jamnagar had tried to record the statements of the petitioner. Deputy Collector visited the village where the petitioners are residing, but at that time they were not found or say available. It is specifically referred in the grounds that so the family memebrs of petitioners were informed about the anxiety of the Deputy Collector that he intends to record statements of the petitioners and by a writing in the form of notice, family members of the petitioners were informed that petitioners should approach the Deputy Collector so that he can record their statements. On the said writing, signatures of the wives of the petitioners were taken. It is mentioned in the grounds of detention that inspite of that, petitioners have not cared to approach the Deputy Collector for getting their statements recorded. This aspect has been considered by the detaining authority as material and important aspect while recording the subjective satisfaction along with statements of witnesses of the village and village record produced by the Village Secretary of both the villages.

7. Plain reading of the grounds of detention served to the petitioners gives an impression that on 8.12.2001, statements of witnesses allegedly in possession of the superstructure erected by the petitioners were recorded. So, it is possible that the Deputy Collector might have tried to record the statements of the petitioners on 8.12.2001 itself. Of course, there is no reference as to the date on which such an attempt was made nor any documentary evidence has been supplied to the detenues regarding the attempt made by the Deputy Collector for recording the statements of the petitioners. There is no documentary evidence on record to show that when such an attempt was made, the petitioners were not available in their village. It is rightly submitted that if any "nil panchanama" was drawn or statements as to non-availability of the petitioners were recorded by the Deputy Collector, then those documents being relevant and important, could have been made part and parcel of the documents supplied to the petitioners. Though it is referred and considered by the detaining authority that members of the family of the petitioners were informed in writing that petitioners should go to the Deputy Collector and give their statements, copy of such writing is also not forming the part and parcel of the documents

supplied to the petitioners. The grounds also do not disclose as to on which date the petitioners were asked to come down to the Deputy Collector and it is inferred that the petitioners have not cared to go to the office of the Deputy Collector, Jamnagar to get their statements recorded.

8. During the course of oral submissions, ld. AGP Mr. Kogje has tried to point out from the file given to this Court for perusal brought from the office of the detaining authority, that on 8.12.2001, such an attempt was made at concerned village and original notice type writing was served to the wives of the petitioners jointly and their signatures were obtained on this paper and on 9.12.2001 the petitioners were called to the office of the Deputy Collector, Jamnagar situated in Lal Bungalow area of the city of Jamnagar. This writing is shown to the Court by ld. AGP on demand and on perusal of this writing, it is clear that Deputy Collector, Jamnagar had attempted to record the statements of the petitioners on 8.12.2001. Non-compliance of the directions given by the Deputy Collector by the petitioners is one of the important and material ground which has been considered by the detaining authority while recording subjective satisfaction. This relevant part is reflected in the conclusive paras of the grounds of detention and this has been considered as one of the important ground for detention. It seems that the detaining authority must have felt that here are the persons who have not even complied with the written directions given to the family members of the petitioners in such a serious and sensitive matter. I am afraid, whether on 9.12.2001 the office of the Deputy Collector would have remained open for a whole day during the office hours as it was a Sunday. Though 8th December was also non-working Saturday for government officers, it is possible that a very sincere officers may work on a non-working day, but it is difficult to accept that on Sunday, office of the Deputy Collector, Jamnagar was kept open or somebody was kept present in the office so that machinery can respond properly if these two petitioners appear and try to put their case.

9. Ld. AGP has placed reliance on the decision in the case of Vijay Champaklal Shah v/s Addl. Secretary to the Government of India & Others, 1985(2) GLR 974 and has submitted that notice prepared by the Deputy Collector at village Meghpar and served to the wives of the both the petitioners jointly asking both the petitioners to appear before him on 9.12.2001, cannot be said to be an important or vital document. It is not obligatory to

serve such document. Only relevant documents are required to be served which can be said to be important and vital document referred to by the detaining authority. In this regard documents like panchanama and/or notice etc can be said to be peripheral or incidental documents and, therefore, such documents were not required to be served. It is settled legal proposition that all incidental and peripheral documents are not required to be served and if detenu feels that a particular document will help him in making effective representation, he can pray for such document.

10. However, in view of the above stated facts and details emerging from the papers,i.e. total factual matrix, I am not inclined to accept this submission that the proceedings drawn by the Deputy Collector, Jamnagar at village Meghpar on 8.12.2001 including issuance of written notice served to the wives of the petitioners jointly, are only incidental or peripheral documents. On the contrary, as discussed above, these documents are vital documents. Non-supply of such important and vital documents clearly violates the constitutional safeguard guarantee flowing from Article 22(5) of the Constitution of India. I agree that charges against the petitioners are very grave, but as per the settled legal proposition, gravity of the offence is not the only important aspect. When orders of detentions are based on such important and vital documents which are not of incidental or peripheral nature on which subjective satisfaction is recorded, then non-supply of such documents would vitiate the orders of detention and such orders cannot sustain and continued detention on the basis of such orders also shall have to be turned down.

11. The document shown to this Court from the bunch of papers available to the ld. AGP viz. copy of the writing prepared at village Meghpar and given to the wives of the petitioners, whether said writing was placed before the detaining authority is also a question to be determined. If it was placed before the detaining authority, then copy of that document could have been served to the petitioners along with the other papers. If it was not placed, then it can not be said to be the satisfaction recorded by the detaining authority objectively and by proper application of mind. If this document was with the detaining authority, then question is why this document was taken out from the bunch of papers which were served to both the petitioners.

12. For short, this Court is satisfied that important and vital document was not made available to the

petitioners and so their right to make an effective representation under Article 22(5) of the Constitution is obviously affected. Mr. Patel has rightly submitted that the ratio of the decision of the Apex Court in the case of Mohd. Zakir v/s Delhi Administration and Others, AIR 1982 SC 696 would clearly apply to the facts of the present case. It is not necessary to raise demand for relevant document by the detenu, but it is an obligation on the authority to supply such document. In the cited decision, the Apex Court has observed as under:-

" It is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution."

In the facts and circumstances of the case, this Court is satisfied that the ratio propounded by the Apex Court in the cited case would squarely apply to the present case and on the sole ground of non-supply of vital and important documents, orders of detention require to be quashed and set aside.

12. Considering the nature of allegations made against the petitioners, and as this Court is quashing the orders of detention on sole technical ground of non-supply of vital and important documents, on the issue, whether State can detain these very petitioners again on the same grounds, enough debate is made before the Court and submissions at length have been made by the ld. counsel appearing for the parties. Today, ld. counsel Mr. Patel for the petitioners has tendered two written undertakings filed by the respective detenues which are taken on record of the respective petitions. Mr. Patel has submitted that both these petitioners have tendered their undertakings voluntarily and so this Court should observe to the effect that it would not be open to the State to detain the petitioners again on the same ground. Without going into the merits of the effect of filing of these undertakings before the Court, it can be observed that breach of any kind of the written commitment made voluntarily before this Court in a writ petition by the petitioners on filing written undertaking

individually and tendered before the Court through their ld. counsel appearing in the Court, may invite any action. If it is found that the same has not been complied with the in its true and correct perspective, then obviously it would provide fresh ground to the detaining authority to detain the petitioners by putting the law into motion so that "public order" can be maintained properly or it is not adversely affected. So, at this stage, I am not inclined to observe whether it would be just and proper or not for the detaining authority to pass fresh orders of detention on the same grounds.

11. For the reasons aforesaid, both the petitions are hereby allowed. Impugned orders of detention dated 10.12.2001 passed by the District Magistrate, Jamnagar against the respective detenu are hereby quashed and set aside and detenu Bhoja Shamala Rabari and Deva Shamala Rabari are hereby ordered to be set at liberty forthwith if they are not required to be detained in any other case. Rule is made absolute in each petition. Direct service is permitted.

5.7.2002 [C.K. BUCH, J]
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